

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,742

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her applications for ANFC and food stamps. The issue is whether assets held in trust for the petitioner's children constitute a resource available to the household within the meaning of the pertinent regulations.

FINDINGS OF FACT

The facts are not in dispute. The petitioner lives with her two minor children. In March, 1993, the petitioner and her husband executed a Declaration of Trust providing that certain assets be placed in trust for their children. The petitioner and her husband were designated as trustees. The petitioner's husband recently left the home, and the petitioner has applied for ANFC, food stamps, and medicaid for herself and the children.

The Department denied the petitioner's applications for ANFC and food stamps because it determined that the trust constituted a resource to the household in excess of the program maximums.⁽¹⁾ Presently, there is about \$7,000.00 in the trust.

The trust includes the following provision:

The Trustees are hereby authorized, at any time and from time to time, to pay to, or apply to the use of, the beneficiary of any trust held hereunder any part or all of principal of such trust as the Trustees may determine in their sole discretion, for such beneficiary's health, support, maintenance, education or welfare, without necessarily taking into account other resources available to such beneficiary. No such payment shall be charged upon a subsequent division of the trust fund against the principal of any share which may be set apart for a beneficiary.

The petitioner maintains that she and her husband primarily intended the trust to provide funds for the children's education. The petitioner also questions whether under the terms of the trust she can use the

money to pay for routine household expenses that benefit her as well as the children.⁽²⁾

ORDER

The Department's decision is affirmed.

REASONS

Both the ANFC and food stamp regulations provide that parents and children who live in the same home must be considered as a single and indivisible "household", and that the income and resources of any household member must be deemed available to the entire household to meet basic needs. Welfare Assistance Manual (W.A.M.) § 2242 and Food Stamp Manual (F.S.M.) § 273.1.

W.A.M. § 2260 includes the following definition of "resources" for purposes of determining eligibility for ANFC:

Resources are defined as any assets, other than income, which an applicant ANFC assistance group has available to meet need. Such assets generally take the form of real or personal property owned by the recipients, individually or jointly with other persons.

The total equity value of all resources, except items specifically excluded, shall be evaluated to establish their combined value for comparison with the resource limitation noted below. The District Directors shall make the final decision as to whether an item is excluded or not. When resources are jointly held by a member of the ANFC assistance group and one or more persons who are not members of the same assistance group, at least a pro rata share of the resources shall be considered available to the applicant assistance group unless it can be demonstrated by the applicant assistance group that such resources are inaccessible to the assistance group. When the assistance group can demonstrate that it has access to only a portion of the resource, the value of that portion shall be counted toward the assistance group's resource level. The resource shall be considered totally inaccessible to the assistance group if the resource cannot practically be subdivided and the assistance group's access to the value of the resource is dependent upon the agreement of the joint owner.

W.A.M. § 2263.2 provides the following discussion of "trusts":

Evaluation of trust funds or trust accounts shall take into account the terms of the trust. The value of principal which can be made immediately available to the applicant/recipient and/or spouse shall be considered. The value of principal which cannot be made available shall be excluded; however, any special provisions for use of principal (such as payment of medical expenses, upkeep of property, etc.) shall be evaluated as a future or potential resource, including but not limited to recovery potential. It is also necessary to take into consideration the value and possible use of interest accruing from trust funds. Unless prohibited by terms of the trust, accrued interest shall be considered as income in the month received and a resource thereafter.

The combined resources limitation for ANFC is \$1,000.00 per household. W.A.M. § 2261.

Section 273.8(e) of the food stamp regulations includes the following discussion of "exclusions from resources":

In determining the resources of a household, only the following shall be excluded:

. . .

8. Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds. . . . Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:

i. The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period:

ii The trustee administering the funds is either:

A. a court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or

B. an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph:

iii Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member, and

iv The funds held in irrevocable trust are either:

A. established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or

B. established from non-household funds by a non-household member.

The maximum allowable resources for a food stamp household is \$2,000.00. F.S.M. § 273.8(b).

In this case it is clear that the terms of the trust (supra) specifically allow the petitioner to spend the principal of the trust assets to meet her children's basic needs. Thus, there is no question that the trust is a countable resource within the meaning of the above regulations. The Department's decision must, therefore, be affirmed. ⁽³⁾ 3 V.S.A. § 3091(d); Fair Hearing Rule

No. 19.

1. Both the petitioner and her children were found eligible for medicaid because that program allows separate filing status for parents and children and has more liberal resource standards for children (see *infra*).

2. The petitioner suffers from a medical condition that appears to severely limit her ability to work. At the hearing the hearing officer and the Department urged the petitioner to apply for Social Security and

SSI disability benefits.

3. At the hearing the petitioner was also advised that she could reapply for ANFC and food stamps as soon as the family's resources went below the program maximums.